IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5148 OF 2005

Uttam Bharu Shevate & Ors. .... Petitioners
Vs.
Vyavasthapak,
Maji Sainik Prashikshan Va
Utpadak Kendra & Anr. .... Respondents

Shri M.S. Topkar for the Petitioners.

Shri S.S. Pakale for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 20, 2006

P.C:

The grievance of the petitioners relate to denial of upgradation while admitting that mere completion of five years of service without satisfactory performance of the work does not entitle the employees to avail the facility of upgradation. It is sought to be argued that undisputedly no production norms were fixed nor any domestic inquiry was conducted pursuant to the notices issued to the employees and in some cases not even notices were issued. Merely because no domestic inquiry was conducted in spite of issuance of notices, that itself cannot lead to the conclusion that the employees had conducted themselves to the satisfaction of the employer. Fixation of production norms may be one of the criteria to ascertain whether

the performance by the employee had been satisfactory or not but that is not the sole criteria to decide the same. Merely because the employer had not issued any notice to some of the employees, even that itself cannot be a criteria to ascertain as to whether the employees had performed to the satisfaction of the employer. It all depends upon the overall assessment of the performance of the employee and on such assessment if the employer is not satisfied about the performance of the employee, the latter cannot insist, as a matter of right, that he should be given upgradation. Viewed from this angle, no fault can be found with the impugned order. The impugned order does not disclose any jurisdictional error so as to warrant interference under Article 227 of the Constitution of India and hence the petition is rejected.

(R.M.S. Khandeparkar, J.)

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